



# **THE ATTORNEY GENERAL OF TEXAS**

**WAGGONER CARR**  
**ATTORNEY GENERAL**

**AUSTIN 11, TEXAS**

**August 27, 1963**

Honorable J. M. Falkner  
Banking Commissioner of Texas  
Austin 14, Texas

Honorable Jesse James  
State Treasurer of Texas  
Austin 11, Texas

Opinion No. C-127

Re: Reimbursement of travel expenses  
for new members of the State Bank-  
ing and State Depository Boards.

Gentlemen:

As ex-officio members of both the State Banking Board and the State Depository Board, you have jointly requested our opinion on the above captioned question. Formerly the Attorney General was a statutory member of each of these boards in addition to each of you; however a recent enactment of the 58th Legislature removed the Attorney General from these boards and provided that a citizen member be appointed. Since the three state officials previously serving on these boards lived in Austin, there was never any appropriation made for travel expenses as such was unnecessary. The problem now arises, and you request how the citizen members serving on such boards may be reimbursed for travel expenses.

Section 18 of Senate Bill 318 of the 58th Legislature states as follows:

"The citizen members replacing the Attorney General on the Boards and Commissions amended by this Act shall be reimbursed for their actual meals, lodging and incidental expenses when performing their duties as members of their respective Boards at all official meetings of the Board on the same basis as is provided for members of the Legislature serving on Boards, Councils, Committees or Commissions, provided, however, that

Hon. J. M. Falkner, and  
Hon. Jesse James, page two (C-127)

the travel expenses herein provided shall not be paid but for fifteen (15) meetings of such Boards per year. Each member shall make out under oath an itemized statement of the number of days engaged in attending official meetings of the Board and the amount of expenses when presenting same for payment."

Subsection d of Section 17 of House Bill 86, the General Appropriation Bill, states as follows:

"Members of the Legislature who serve on any Board, Council, Committee of Commission shall receive actual expenses for meals, lodging, and incidental expenses not to exceed Twelve Dollars (\$12) per day when traveling on official business inside the State; and shall be reimbursed for actual expenses incurred for meals, lodging, and incidental expenses when traveling on official business outside the State. Claims for reimbursements of such expenses shall be presented on forms prescribed by the Comptroller.

"When traveling on official business inside the State, such Members of the Legislature shall be reimbursed for mileage on the same basis as is provided in the Constitution for Members of the Legislature; and it is further provided that the same mileage rates shall apply to necessary travel to points within the State other than the seat of government. . . ."

No appropriation was made, however, for reimbursement for travel expenses incurred by the citizen members.

Considering the problem with regard to the State Banking Board, we find that there is no appropriation whatsoever for the Banking Department other than one to cover operating space in the John H. Reagan Office Building. It is further significant that Article 342-112 of Vernon's Civil Statutes, the Banking Code of 1943, specifically states that:

"The Commissioner shall, from time to time as directed by the Finance Commission, submit to such Commission a full and complete report of the receipts and expenditures of the Banking Department and the Finance Commission may from time to time examine the

Hon. J. M. Falkner, and  
Hon. Jesse James, page three (C-127)

financial records of the Banking Department or cause them to be examined. In addition, the Banking Department shall be audited from time to time by the State Auditor in the same manner as other State Departments, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Banking Department. Fees, penalties and revenues collected by the Banking Department from every source whatsoever shall be retained and held by said Department, and no part of such fees, penalties and revenues shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Banking Department shall be paid only from such fees, penalties, and revenues, and no such expense shall ever be a charge against the funds of this State. The Finance Commission shall adopt, and from time to time amend, budgets which shall direct the purposes, and prescribe the amounts, for which the fees, penalties and revenues of the Banking Department shall be expended; and the Finance Commission shall, as of December 31, 1951, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements of the Banking Department for each calendar year; and shall within the first sixty (60) days of each succeeding Regular Session of the Legislature make a report to the appropriate committees of the House and Senate charged with considering legislation pertaining to banking." (Emphasis added).

Many opinions from this office have held that the expenses of the Banking Department and the Banking Board may be paid out of any revenues collected by the Department, whether from penalties, fees, examinations or otherwise. The Finance Commission provides in its budget the amounts allocated for the various purposes. Attorney General's Opinions Nos. WW-725 (1959); WW-1095 (1961); and C-88 (1963). Opinion No. WW-500 (1958) stated:

"Since the above quoted portion of Article 342-112 provides that all expenses incurred

Hon. J. M. Falkner, and  
Hon. Jesse James, page four (C-127)

by the Banking Department shall be paid only from such fees, penalties and revenues, and the expenses incurred on behalf of the Banking Department for the services of the Court Reporter being legitimate expenses, you are advised that the Finance Commission of Texas may authorize the payment of these obligations."

Since we have previously held that the Finance Commission may set aside funds to satisfy expenses incurred by the State Banking Board, we advise you that such Commission may likewise set aside funds to cover travel expenses of the new citizen member of the Banking Board.

A different situation exists as to the citizen member of the State Depository Board. The Finance Commission has no authority to budget funds for this purpose as it is not properly an expense incurred by the State Banking Board or State Banking Department. The Treasurer's office has a line item appropriation for travel expenses for its own departmental employees only. It therefore follows that there are no existing funds to reimburse the citizen member of the State Depository Board for his travel expenses. However, Senate Bill 318 constitutes pre-existing law, so as to enable a subsequent Legislature to make an appropriation to reimburse the citizen member for his prior travel expenses.

#### S U M M A R Y

The citizen member replacing the Attorney General on the State Banking Board may be reimbursed for his travel expenses by funds set aside by the Finance Commission of Texas.

There are no existing funds to cover travel expenses of the citizen member replacing the Attorney General on the State Depository Board.

Yours very truly,

WAGGONER CARR  
Attorney General

*Fred D. Ward*  
By Fred D. Ward  
Assistant

FDW:ms

Hon. J. M. Falkner, and  
Hon. Jesse James, page five (C-127)

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Milton Richardson  
John Reeves  
Dudley McCalla  
J. C. Davis

APPROVED FOR THE ATTORNEY GENERAL  
By: Stanton Stone